IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.06.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.460 of 2006

Dr.R.Arulmozhi .. Petitioner/Tenant

vs.

M.Sadasivam .. Respondent/Landlord

Revision Petition filed against the judgment dated 19.10.2005, in R.C.A.No.1/2005 on the file of the Appellate Authority (Sub-Court) Poonamallee confirming the order in R.C.O.P.No.22/2000, dated 24.9.2004 on the file of the Court of Rent Controller (District Munsif), Ambattur.

For Petitioner : Mr.T.P.Manoharan
For Respondents : Mr.K.Elango

JUDGMENT

This Revision has been filed under Sec.25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (hereinafter called 'the Act') against the judgment dated 19.10.2005 made in RCA No.1/2005 on the file of the Appellate Authority, (Sub-Court) Poonamallee, confirming the order dated 24.9.2004 made in R.C.O.P.No.22/2000 on the file of the Rent Controller (District Munsif), Ambattur.

2. The unsuccessful tenant before both the authorities below has filed the above revision petition. The respondent/landlord filed RCOP No.22/2000 on the file of the learned Rent Controller, Ambattur praying for an order of eviction under Sec.10(2)(i), 10(2)(ii)(b) and 10(3)(a)(i) of the Act.

3. The Rent Controller by order dated 24.9.2004 ordered eviction on the ground of wilful default and owner's occupation and dismissed the RCOP on the ground of different use by the tenant. Aggrieved by the same, the tenant filed RCA No.1/2005 and the Appellate Authority by order dated 19.10.2005 dismissed the same thereby confirmed the order of the Rent Controller. Challenging the concurrent judgments, the above revision petition has been filed by the tenant.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

4. The respondent/landlord is the absolute owner of the ground floor flat bearing Door No.45/7, Shanthiniketan Colony, Anna Nagar Western Extension, Chennai.600 101. The petitioner and the respondent herein entered into a lease agreement on 28.8.1996, according to which, the tenant agreed to pay a sum of Rs.1,600/- p.m towards rent and a sum of Rs.2,000/- p.m towards amenities. Thus the total monthly rent payable by the tenant is Rs.3,600/-. A sum of Rs.21,600/- has been paid by the tenant as advance. The relationship between the parties got strained resulting in the tenant sending a letter dated 28.12.1999 informing the landlord that he would be sending a sum of Rs.1,600/- only from December 1999, as the promised amenities were not provided by the landlord. The tenant further informed in the above letter that he had paid a sum of Rs.2,000/- every month in excess during the past three years and therefore the excess amount paid towards the amenities should be refunded by the landlord. The landlord sent a legal notice dated 12.2.2000 claiming arrears of rent not only at the admitted rate of Rs.3,600/- but also on the basis of the proposed enhancement as stated in the agreement. He claimed arrears and the payment of rent from the ;month of August 1997 to January 1999 and also March 1999 to February 2000. He further informed the tenant that he wanted the property for his own use and occupation and blamed the tenant for using the property for non-residential purpose, even though it was let out for residential purpose. The petitioner/tenant sent a reply dated 27.2.2000 claiming that a sum of Rs.78,000/- was paid by him as an excess amount towards the amenities and an excess advance amount of Rs.20,000/- held by the respondent/landlord. In such circumstances, the petitioner/tenant called upon the respondent/landlord to return the excess amount of Rs.98,000/- (78,000 + 20,000) and till such time adjust the excess amount held at the rate of Rs.1,600/- per month from the month of January onwards. After sending a reply dated 15.3.2000 the respondent/landlord filed the RCOP as stated above.

5. The Rent Controller after evaluating the evidence held that having accepted to pay a sum of Rs.3,600/- per month by entering into a lease agreement, the petitioner/tenant cannot be permitted to say that he is entitled to pay only a sum of Rs.1,600/-per month and the alleged excess amount paid by him in the past towards amenities should be adjusted in the future rents. While rejecting the petition on the ground that the property was used for some other purpose, the Rent Controller accepted the case of the respondent/landlord that the premises was required for his own use and occupation. The Appellate Authority was in agreement with the order of the Rent Controller and therefore dismissed the appeal.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6. Heard both the learned counsel appearing on either side. I have also perused the documents filed in support of their submissions.

7. Learned counsel for the petitioner/tenant contended that both the authorities did not consider and discuss the facts, pleadings, contents of the exhibits and depositions with reference to the ingredients to Sec.10(2)(i) and 10(3)(a)(i) of the Act. The learned counsel has also submitted that the excess amount lying in the hands of the respondent/landlord should be adjusted towards the rent payable as per Sec.7 of the Act. As both the authorities below did not consider the issue in the proper perspective, the order of the authorities below is liable to be interfered with by this court.

8. He relied on the following judgments in support of his contentions:-

(1) 1979-II M.L.J. 326 (Pattabiraman v. Accommodation Controller); (2) 1974 T.L.N.J. 245 (K.R.Loganatha Naicker vs. S.R.Balasundara Mudaliar); (3) 1978-I M.L.J. 79 (Khader Md. Rowther v. G.S.Sundaram); (4) 2000-I-L.W. 853 (Narayanaswamy v. Raman); (5) 2000 (1) SCC 451 (chandramohan (Vs) Sengottaiyan and others) (6) 2000(II M.L.J. 202 (Mahalingam v. Pichaiammal) and (7) (2005) 4 M.L.J. 127 (Sudhandhira Devi,R. v. K.Navanithakrishna).

9. Per contra, learned counsel for the respondent/landlord supported the decision of the authorities and pointed out that by unilaterally choosing to pay a sum of Rs,1,600/- only towards the monthly rent as against Rs.3,600/- per month as agreed upon in the lease agreement, which also he paid for a period of three years from the date of the lease agreement, the tenant is guilty of wilful default.

10. Both the petitioner and the respondent admit that a lease agreement was entered into on 28.8.1996 and a perusal of the same shows that the petitioner herein agreed to pay a total sum of Rs.3,600/- per month consisting of Rs.1,600/- per month towards rent and Rs.2,000/- per month towards amenities to the respondent herein. A sum of Rs.21,600/- was required to be paid under the agreement as security deposit. It is not disputed that this amount was paid by the tenant. The petitioner/tenant has also been paying the monthly rent of Rs.3,600/- for three years and the documents filed before the rent controller would prove that the petitioner/tenant is not proper and prompt in paying the monthly rent then and there when it became due. Several letters have been written by the landlord demanding the amount and the petitioner/tenant sent replies promising to pay the amounts soon.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

11. Admittedly, the relationship between the landlord and the tenant was strained as the respondent/landlord sought to increase the rent by 10% as per clause 12 of the lease agreement. By letter dated 28.12.99, the petitioner/tenant informed the respondent/landlord that on and from December 1999, he would send a sum of Rs.1,600/- per month and he is also entitled to the refund of the excess amount paid by him towards amenities during the past three years.

12. This conduct of the petitioner/tenant, in my view, is not bona fide. Admittedly, he has been paying the monthly rent of Rs.3,600/- as per the lease agreement and nowhere in the lease agreement it was stipulated that the amenities charges of Rs.2,000/- per month would become payable only after some repair works were done by the respondent/landlord, at a cost of Rs.1,25 lakhs. This was raised by the revision petitioner for the first time after the relationship got strained. Similarly, the revision petitioner cannot be allowed to say that the amount of Rs.2,000/- per month paid by him towards amenities for the past three years should be refunded or adjusted for future rents. Having paid a total sum of Rs.3,600/- per month without any demur or protest, the revision petitioner is estopped from saying that the monthly rent is only Rs.1,600/- per month and not Rs.3,600/- per month. Therefore I am in agreement with the courts below that the tenant has committed wilful default once he admitted openly that he is entitled to send a sum of Rs.1,600/- per month from December 1999 onwards.

13. Insofar as the adjustment of the rent is concerned, it is true that under Sec. 7(2)(a)(b) of the Act, the landlord may receive the payment of an amount not exceeding one month rent by way of an advance and any sum paid in excess shall be refunded or adjusted at the option of the tenant. In the present case, the revision petitioner has paid six months' advance amount of Rs.21,600/-. Whereas, the respondent is entitled to a sum of Rs.3,600/- alone as advance amount. That means, a sum of Rs.18,000/- is held by the respondent/landlord in excess, which could be adjusted towards the monthly rental arrears. That being so, the excess advance amount could be adjusted for five months rental arrears. As per the letter dated 5.1.2000 sent by the respondent, the revision petitioner did not pay any amount after January 1999 which means the revision petitioner is due to pay the monthly rent from the month of February 1999 onwards. If these excess advance amount of Rs.18,000/- is adjusted, still the revision petitioner is due to pay the monthly rent from August 1999 onwards. In such circumstances, the revision petitioner cannot take shelter under Sec.7 of the Act and he has been guilty of wilful default on this score also.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

14. The revision petitioner in the reply notice dated 27.2.2000 claimed that the sum of Rs.98,000/- being held by the respondent/landlord as excess amount consisting of Rs.78,000/- paid by him towards amenities at the rate of Rs.2,000/-per month and Rs.20,000/- towards excess advance amount. I have already held that the tenant cannot be allowed to say that the rent payable by him is only Rs.1,600/- per month. But, in this notice, the revision petitioner has deducted a sum of Rs.1,600/- as one month's advance and claimed that a sum of Rs.20,000/- is held by the respondent/landlord as excess advance amount which is again not correct. Only a sum of Rs.18,000/-is held by the respondent/landlord in excess. But in his deposition, the revision petitioner has gone further and deposed that a sum of Rs.1,20,000/- is held by the landlord as excess amount consisting of Rs.78,000/- towards amount paid for amenities, Rs.20,000/- as excess advance amount and Rs.22,000/- for repair and maintenance work done by him on the petition premises. Thus the revision petitioner has been taking different stance without any evidence and such a conduct of the revision petitioner is not bona fide and I reiterate that the revision petitioner committed wilful default in the payment of agreed monthly rent.

15. Now let me consider the judgments cited by the learned counsel for the revision petitioner.

16. In 1971-II M.L.J. 326 cited supra, this court has held as follows:-

> "2. I am unable to agree with the contentions of the learned Government Pleader. In a case where quasi-judicial tribunals adjudicate upon rights of parties after hearing them it is but elementary that they should give demonstrable reasons so that when it is scrutinised by any one in the higher hierarchy exercising visitorial powers he should be in a position to appreciate as to what was the real reason behind the order impugned or passed. It is now well-settled that such judicial authorities ought not to lightly reject petitions by passing a non-speaking order which is totally bereft of any reasoning. Such reasons ought to form part and parcel of the order itself so that the order could be demonstrated to be one which is sustainable or otherwise by the superior Court or authority when it has the occasion to refer to it and consider whether such an order is proper or regular. This view

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

is accepted by the Supreme Court in one of its latest pronouncements in Travancore Rayons v. Union of India, A.I.R. 1971 S.C. 862, The Supreme Court said:

> "When judicial power is exercised by an authority normally performing executive or administrative functions, the Supreme Court insists upon disclosure of reasons in support of the order on two grounds; one, that the party aggrieved in a proceeding before the High Court or the Supreme Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power".

On the ground that the 1st respondent failed to give any satisfactory reasons and indeed no reason at all to justify the challenged order, the writ petitions should succeed."

17. In the above decision this court held that quasi-judicial tribunals should give demonstrable reasons so that when it is scrutinised by any one in the higher hierarchy he should be in a position to appreciate as to what was the real reason behind the order impugned or passed.

18. I do not think that the authorities below failed to give any demonstrable reasons so that this court was not in a position to appreciate as to what was the real reason behind the order of eviction.

19. In (2000) 1 SCC 451 cited supra, the Hon'ble Supreme Court held that only when the Rent Controller is satisfied that tenant's default is wilful he can order eviction and whether the default is wilful is a question of mixed facts and law. In the very same judgment, the Hon'ble Supreme Court held that where findings recorded by Appellate Authority are illegal, erroneous or perverse, High court under Sec.25 of the Act 18/1960 may reverse the findings and record its own findings.

20. In the case on hand, the default of the tenant is unquestionably wilful default and both the authorities have come to a correct finding and therefore there is no necessity to interfere with those findings.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

21. In 2000-1-L.W. 853 cited supra this court held as follows:-

> "12. In the light of the above pronouncements, this Court has to consider the merits of the Second Appeal. Though the findings of the two Courts below are concurrent, this Court is unable to sustain the judgment of the Courts below as they have miserably failed to consider the material documents and oral evidence. The omission to consider the material documents and material portion of the evidence by the two Courts below is a valid ground for interference in the Second Appeal, even if it is against concurrent findings. Merely because, the findings are concurrent, this Court is not helpless when it is demonstrated that the two Courts below have failed to advert or consider the material portion of the evidence or their appreciation of evidence is perverse or the findings recorded by the two Courts below are demonstrably incorrect on the face of the documentary evidence produced before the two Courts below. This Court is considering this appeal being conscious of the pronouncement of the Apex Court as to the Court's power under Section 100, C.P.C."

22. In the above case this court has held that when the courts below miserably failed to consider the material documents and oral evidence or their appreciation of evidence is perverse, this court can interfere under Sec.100 of C.P.C. The facts of the above case are different and they do not support the case of the revision petitioner.

23. In (2000) II M.L.J. 202 cited supra, this Court held as follows:-

> "12. In view of the law declared by the Honourable Supreme Court, it has to be held that landlady has no cause of action to file application for eviction on the ground that tenant has committed default in paying rent. As stated earlier, landlady has taken advance of 60 months rent, though law permits to take advance of only one month rent. Excess advance is liable to be adjusted in the rent payable by tenant as and when becomes due even without any demand from tenant. If that be so, landlord

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

> cannot expect payment of rent for the alleged period of default. If landlord cannot demand any rent for that period, notice issued by her intimating default also will be invalid and of no legal consequence. On the date when notice was issued, no rent was due nor payable by tenant. If notice issued is invalid merely because tenant did not pay rent within a period of two months, he also cannot be deemed as defaulter. Appellate authority has not taken into consideration the above legal position while confirming the order of eviction."

24. I am in entire agreement with the above decision, according to which excess advance is liable to be adjusted in the rent payable by the tenant as and when it becomes due even without payment from the tenant. I have also already held that even after the adjustment of the excess advance amount, still the revision petitioner is in arrears of rent which is wilful and wanton warranting an order of eviction.

25. In the light of the above, the revision petition challenging the order of the appellate authority ordering eviction on the ground of wilful default fails and the order of eviction on the ground of wilful default has to be upheld and accordingly upheld.

26. Insofar as the eviction confirmed on the ground of owner's occupation is concerned, the learned counsel for the petitioner strenuously contended that the respondent/landlord has miserably failed to prove his case and both the authorities below have mechanically upheld the contention of the landlord that he is in bona fide need of the petition premises for his own use and occupation.

27. The Appellate Authority in the order dated 19.10.2005 held that the tenant was not able to prove by letting in evidence that the respondent/landlord owns some other building other than the petition premises and upheld the order of eviction on this ground also. The Appellate Authority has not considered the fact that excepting making averments in the petition and giving oral evidence that the respondent/landlord is not owning any other property, the respondent/landlord has not let in any other evidence to prove that he is in real need of the petition premises for his own use and occupation.

28. In 1974 T.L.N.N.J. 245 cited supra this court held as follows:-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"The tenant is the petitioner. The courts below have not given any definite finding as required U/s. 10(3)(c); In cases arising U/s. 10(3)(c), certain stated considerations arise besides the normal features which usually come up for decision in courts in the matter of the acceptance or rejection of application for eviction filed by landlords for additional accommodation. In this case, the court is concerned with an application U/s.10(3)(c). The common features which are to be taken notice of by the Controller and the appellate authority, while dealing with such applications are that the Controller or the appellate authority as the case may be, is so satisfied shall make an order directing the tenant to put the landlord in possession of the part of the building for the possession of which the application for additional accommodation has been filed, and if not so satisfied the application has to be rejected. The above special feature in an application U/s.10(3)(c) is subject to the proviso to S.10(3)(c) of the Act. The crucial aspect therefore, could be charaterised as a special incident in matters arising U/s. 10(3)(c) is that there should be a categorical finding by the statutory authority that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord. This special prescription is not to be considered as otiose or an an irrelevant appendage in the statute. It has been specially provided for so as to avoid necessary hardship to the tenant, as in the case under consideration the landlord is only seeking additional accommodation in the same premises, whether for residential or non residential purposes. Therefore, it becomes imperative for the authorities in cases arising U/s.10(3)(c) to give a specific finding whether the hardship which the tenant is likely to suffer will outweigh the advantage to the landlord or vice versa. Unless this aspect is noticed and adjudged upon by the statutory authorities there is no complete enquiry on the statute contemplated in regard to the petition arising U/s.10(3)(c). Such an enquiry has not

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

been undertaken in this case. Therefore, there has not been a proper disposal of the application U/s.10(3)(c)."

29. In this decision this court considered the provisions of Sec.10(3)(c)of the Act and held that it is imperative for the authorities in cases arising under Sec.10(3)(c) to give a specific finding whether the hardship which the tenant is likely to suffer would outweigh the advantage to the landlord or vice versa.

30. This decision is not applicable to the case on hand as the eviction petition has not been filed under Sec.10(3)(c) of the Act.

31. In 1978-I-M.L.J. 79 cited supra this court held as follows:-

"Sec.10(3) (a) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, provides for eviction of tenants in cases where the landlord requires the building for his own occupation. Sub-clauses (i) to (iii) lay down the particular circumstances under which a landlord can ask for eviction of the tenant. Sub-clause (i) deals with residential buildings; sub-clause (ii) deals with non-residential buildings which are meant, or actually used, for stationing vehicles; sub-clause (iii) deals with other non-residential buildings. It may be that the language of sub-clause (iii) as compared with sub-clauses (i) and (ii) is susceptible of a narrow, literal, interpretation, but it is the common acceptation of lawyers and Courts that this provision, like the other two following provisions in the same sub-section, lays down two indispensable conditions for an eviction petition. The landlord must be in need of the premises under the tenant's occupation for the purpose of his own business or that of a member of his family. The landlord must have no other non-residential building of his own elsewhere in the same city, town or village concerned."

32. This court in the above judgment lays down two indispensable conditions for eviction where the landlord requires his building for his own occupation. One of the conditions is that the landlord must be in need of the premises under the tenant's occupation for the purpose of his own occupation or that of a

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

member of his family. The Rent Control Appellate Authority has failed to examine whether the respondent/landlord satisfied the two initial requirements and simply proceeded to upheld the order of the Rent Controller. The Rent Controller also has not considered these aspects and mechanically allowed the eviction petition on the ground of owner's occupation.

33. In (2005) 4 M.L.J. 127, this court held as follows:-

> "20. Excepting the above averments, no other averments are available, such as, what is the name of the business, in which building that business is carried on, who is the owner of that building, what is the rent payable, etc. The landlords cannot escape very easily contending that the pleadings in the rent control application should not be construed so strictly, and it is sufficient, if some allegations are available for personal occupation. It is incumbent upon the landlord to plead the minimum requirements, to satisfy the ingredients available under Sec.10(3)(a)(iii) of the Act. Sec.10(3)(a)(iii) of the Act says, 'the landlord or the member of the family, if the building is required for the member, must be carrying on business on the date of filing of the application, that he or the member of the family should not own any non-residential building for the purpose of carrying on the said business and that the requirement must be bona fide, not aiming at evicting the tenant. Therefore, the landlord must say, whether the member of the family, since in this case the building is sought for the members of the family, is owning any property, of his own, as nonresidential building, for the purpose of carrying on business, which is absent here. What is the name of the business, who is the owner of the business is also not specifically pleaded. In the absence of any proof, by producing some documents at a later stage, the landlords want to make out a case, as if the members of the family are carrying on the business. If pleadings are available, then only, comparing the same with the evidence, whether the evidence fits-in with the pleadings, the requirement could be ascertained, in order to have the satisfaction by the Rent Controller or

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the appellate Authority, as the case may be, checking the bona fide."

34. I am in respectful agreement with the above judgment and this decision will definitely apply to the facts before this court. The respondent/landlord has not at all satisfied the minimum requirement to attract the ingredients available under Sec.10(3)(a)(i) of the Act.

35. In view of the above discussion, I am inclined to hold that the eviction order passed by the authorities below on the ground of owner's occupation is not proper and the same is therefore liable to be set aside. Accordingly, the same is set aside.

36. In the result, the revision petition is partly allowed, setting aside the order passed by the authorities below on the ground of owner's occupation and dismissing the revision petition on the ground of wilful default and the revision petitioner is liable to be evicted from the petition premises on the only ground of wilful default committed by him. No costs. C.M.P.No.3447/2006 is closed.

After pronouncement of the order today, the learned counsel for the tenant/petitioner seeks time for the tenant to vacate the premises and hand over vacant possession. Accordingly, six months' time is granted to the tenant/petitioner from today to vacate and hand over the vacant possession of the premises in question to the respondent/landlord on condition that the tenant/petitioner files an affidavit of undertaking to this effect within a period of seven days from today, after serving a copy of the same to the learned counsel for the respondent/landlord.

Post the matter on 29.06.2006.

cla 16.06.2006

This Civil Revision Petition having been posted on 29.6.2006 subsequent to the order of this Court dated 16.6.2006 and made herein and in the presence of the aforesaid advocates, the Court made the following Order:

As per the order dated 16.06.2006 of this Court, an affidavit has been filed by the petitioner to the effect that the tenant will

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

vacate the premises and hand over the vacant possession. Hence, the petitioner shall vacate and hand over vacant possession of the demised premises to the respondent at the expiry of six months from the date of the order made in the C.R.P. It is also made clear that before vacating the premises, 15 days prior notice shall be given to the landlord to enable him to make necessary arrangements.

2. With this above observation this Civil Revision Petition is closed.

29.06.2006

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1.The Subordinate Judge,
The Rent Control Appellate Authority,
Poonamallee.

2. The District Munsif,
(The Rent Controller), Ambattur.

1 cc to Mr.K. Elango, Advocate, Sr. 27763
1 cc to Mr.T.P. Manokaran, Advocate, Sr. 27828

C.R.P.(NPD)460/06.

NG (CO)
kk 27/6

NG (CO)

dv/10.7.06

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/